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July 26, 2013

Hon. Jeffrey Cohen
Acting Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 12-M-0192

Dear Acting Secretary Cohen:

This letter is submitted on behalf of Central Hudson Gas & Electric Corporation ("Central Hudson") in response to the unsolicited letter filed on July 18, 2013 in the above-referenced proceeding by the Public Utility Law Project ("PULP"). It is submitted within eight days following PULP's letter, on the supposition that the letter is equivalent to a motion.

As Central Hudson was preparing to submit this response it received electronically a rehearing petition from PULP (and an additional one from another party group). The PULP rehearing (at 23-28) appears to make assertions similar to those raised in its letter of July 18, 2013, but insufficient time has been time available to analyze PULP's rehearing petition. Accordingly, Central Hudson reserves the right to answer the rehearing petitions fully at a later date in accordance with the Commission's rules.

Background

The Commission's June 26, 2013 Order Authorizing Acquisition ("Acquisition Order") approved the Joint Proposal ("JP") of January 25, 2013, in relation to the establishment of a "golden share" class of preferred stock by Central Hudson. As here relevant, the JP (at 11-12), provides:

The Commission's approval of this Joint Proposal will represent all Commission authorization necessary for Central Hudson to establish a class of preferred stock having one share (the "golden share"), subordinate to any existing preferred stock, and to issue that share of stock to a party who shall protect the interests of New

York and be independent of the parent company and its subsidiaries. Such share of stock shall have voting rights only with respect to Central Hudson's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock. Central Hudson shall notify the Commission of the identity and qualifications of the party to whom the share is issued and the Commission may, to the extent that such party is not reasonably qualified to hold such share in the Commission's opinion, require that the share be reissued to a different party within three months of receipt of such notification. (Emphasis added)

The Acquisition Order states that “[t]his is identical to a provision included in our order approving the acquisition of New York State Electric and Gas Corporation [“NYSEG”] and Rochester Gas & Electric Corporation [“RGE”] by Iberdrola.” Acquisition Order at 15, Commission footnote omitted.¹ Thus, to supplant the nominee proposed by the utility, the Commission must find that the party is “not reasonably qualified....”

On July 12, 2013, Central Hudson notified the Commission of the identity and qualifications of the party, GSS Holdings (CHGE), Inc. (“GSS-CHGE”), a special purpose corporation established to hold and vote the Central Hudson golden share, to which the golden share had been issued. Global Securitization Services, LLC, (“GSS, LLC”), the parent company of GSS-CHGE, is also the parent of the special purpose corporations which the Commission approved as the holders of the golden shares for NYSEG and RGE. As demonstrated in Exhibit II to Central Hudson’s filing, GSS, LLC is in the business of providing a variety of bankruptcy remoteness and other services. As also shown in Central Hudson’s filing (at 2), GSS, LLC provides similar services as the holder of the Portland General Electric Company golden share, with the approval of the Oregon Public Utility Commission.

Central Hudson’s submission conforms to the JP and Commission precedent and is therefore per se reasonable

At this time, the only matter for Commission consideration is whether GSS-CHGE could be found to be “not reasonably qualified to hold such share....” It cannot; GSS-CHGE is reasonably qualified.

The Commission’s requirements for the golden share are comprised of (i) required amendments to the utility’s certificate of incorporation to establish the “golden share” class of security and (ii) the selection of the holder of that golden share. The terms of the utility’s certificate of incorporation that are necessary to protect ratepayer interests in relation to the golden share class of security were established in the Commission’s Order Authorizing Issuance of Preferred Stock (Issued and Effective June 24, 2009) (“Iberdrola Golden Share Order”) in

¹ Notwithstanding the obvious relevance of Iberdrola precedent to the subject addressed in its letter, PULP ignores the Iberderola precedent entirely. This failure to acknowledge a directly applicable adverse precedent is indicative of a weak, if not improper, presentation by PULP.

Case 07-M-0906. The amended Central Hudson certificate of incorporation approved in the Acquisition Order was directly modeled on the requirements of the Iberdrola Golden Share Order. The fact that Central Hudson's certificate amendment is acceptable to the Commission is evidenced by the Secretary's endorsement of that certificate amendment. In addition, as stated previously, NYSEG and RGE issued their golden shares to GSS, LLC special purpose corporations. Central Hudson issued the Central Hudson golden share to another GSS, LLC special purpose corporation subsidiary, GSS-CHGE. Therefore, because the certificate amendments and holders of the golden share are equivalent between the Iberdrola case and the present case, there can be no debate as to the reasonable qualification of GSS-CHGE to hold the Central Hudson golden share.²

PULP's letter is untimely and entirely unjustified

PULP seeks to alter the approach approved in the Iberdrola case and in the Acquisition Order. PULP proposes a change in the nature of the holder, from a private entity to a State official holder, under the guise of a response to the Central Hudson selection of GSS-CHGE. The proposal to require a State official holder of the golden share is a proposal to alter the terms of the Joint Proposal, and should have been presented, if at all, in PULP's February 8, 2013 "Initial Comments...in Opposition to Joint Proposal." The PULP position that "private entities" (PULP letter at 2-3) lack the "authority" to protect the relevant interests should have been raised at that time or earlier.³

In addition to being untimely, PULP's position is without a proper basis. The Legislature has determined that it is the Commission's responsibility, not the Comptroller's or Attorney General's, to protect the public interest in relation to utility operations. The Commission has rationally exercised its extensive authority through adopting the "belt and suspenders" approach of the golden share, together with the requirements for independent directors and other measures required in the Acquisition Order to protect the public interest.

PULP's belated attempt to suggest that there is a need for a different approach, through alleging that there are no standards for the golden share holder, is wrong. A standard has been set forth: to "protect the interests of New York."⁴ While general, this standard is closely aligned with the Section 70 "public interest" standard, and it is a standard with which GSS, LLC has

² As the Commission stated in the Acquisition Order in a somewhat different context: "the clearest articulation of the public interest analysis in a case such as this can be found in our decision approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola." Acquisition Order at 59.

³ PULP's attempt to change the terms of the Acquisition Order could also be viewed as an attempted rehearing of that Order. If so viewed, PULP failed entirely to demonstrate any error of fact or law or changed circumstances that would warrant rehearing. PULP's preference that the golden share holder be a State official is merely PULP's value judgment and is inadequate to sustain PULP's burden.

⁴ Moreover, the "interests" that are to be protected are amply illustrated through the Acquisition Order's extensive discussions of protections for ratepayers and preservation of community involvement, as but two obvious examples.

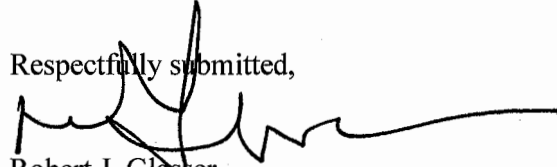
experience in both New York and Oregon. In contrast, PULP points to no comparable experience in the Comptroller or Attorney General in the utility context.

In the present context, contrary to PULP's position, the special purpose nature of GSS-CHGE is an advantage because it mitigates against potential conflicts of interest. In contrast, PULP's reliance upon the broad scopes of responsibility and authority that the Comptroller and Attorney General have could easily lead to conflicts of interest in their holding of a golden share, among the many interests they have been given authority to address. For example, in a bankruptcy, a State facility maybe in a position to avoid a portion of its utility charges in certain circumstances. That potential would create a conflict of interest vis-à-vis the responsibilities of a State official holding the golden share that would not apply to GSS-CHGE. Should there be a dereliction of duty or error of judgment made by a State official holder of the golden share, the opportunity for remedy or redress by the Commission would, at most, be limited, if it existed at all, and this contrasts significantly to the situation in which the share is held by the nominee of the utility that is subject to the Commission's extensive on-going authority, where a variety of remedies could potentially be applied.

Conclusion

GSS-CHGE is qualified to hold the golden share. There is no basis upon which the Commission rationally could conclude otherwise, consistent with the Acquisition Order and Iberdrola precedent. PULP has failed to present any legitimate basis for altering the applicable Commission requirements and precedent, even though PULP had many opportunities to advance its value judgments prior to this late date. PULP's untimely arguments and positions should be ignored.

Respectfully submitted,



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Cc: Hon. David L. Prestemon; Hon. Rafael A. Epstein and Active Parties